

Resolution No.: 15-1559
Introduced: July 25, 2006
Adopted: July 25, 2006

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-819 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Erica Leatham, Esquire, Attorney for Applicant Hampden Lane, LLC, OPINION AND
RESOLUTION ON APPLICATION

Tax Account Nos. 07-00490078, 07-00489822, 07-00486726 and 07-00486726

OPINION

Local Map Amendment Application No. G-819, filed on February 3, 2004 by Applicant Hampden Lane, LLC, requests reclassification from the R-10 (Residential, multi-family) and R-60 (Residential, single-family) Zones to the TS-R Zone (Transit Station-Residential) of 30,891 square feet of land in the Edgemoor subdivision (7th Election District) comprised of part of Lots 5 and 6, Block 24B; part of Lots 8 and 9, Block 24D; 313 square feet of right-of-way owned by Montgomery County that was formerly part of Lot 6, Block 24B; and 815 square feet of right-of-way owned by Montgomery County that was formerly part of Lots 8 and 9, Block 24D.¹ The site is located at 4802 and 4804 Montgomery Lane and 4901 and 4905 Hampden Lane, Bethesda.

¹ The Applicant owns approximately 29,763 square feet of the area proposed for rezoning. This includes 7,217 square feet of land that is already dedicated for roadway use. Based on past practice, the Planning Board can be expected to include the past dedication in the tract area used to calculate permitted density. As noted in the text above, the area proposed for rezoning also includes 1,128 square feet of land that is owned by Montgomery County, having been acquired by eminent domain in the past. This property was previously part of the lots and blocks at issue here. The Applicant hopes to buy this property back from the County, then immediately re-dedicate it for public use in connection with its development of the site. The Applicant and Montgomery County entered into a Memorandum of Understanding Agency Authorization (Exhibit 26(a)) on April 6, 2004, which authorizes the Applicant to seek rezoning for the County-owned land included in this application, and at least impliedly authorizes the Applicant to seek rezoning for the dedication parcels, to the extent such authorization may be necessary. The Memorandum of Understanding states explicitly that it "shall not affect, in any manner whatsoever, any public action, review or approval process involving the County. . . ." Ex. 26(a) at 3.

The Hearing Examiner recommended approval of the original application, as did the Montgomery County Planning Board (the "Planning Board"). The Planning Board's Technical Staff recommended denial of the application on grounds that it would not be consistent with the recommendations of the 1994 Bethesda CBD Sector Plan (the "Sector Plan").

The District Council first considered this matter on February 8, 2005, and granted a request for oral argument. Following oral argument on March 1, 2005, the District Council remanded the case to the Hearing Examiner to reopen the record, for the limited purpose of giving the Applicant the opportunity to amend its development plan to specify, as a binding element, that all moderately priced dwelling units ("MPDUs") would be provided on site. The Hearing Examiner submitted a Supplemental Report and Recommendation following the remand, which referenced the revised Development Plan and reiterated the conclusions and recommendation stated in the original Report and Recommendation in this matter.

On April 12, 2005 the District Council voted 9 to 0 to deny the application, finding that the application was inconsistent with the recommendations of the Sector Plan due to the 100-foot height proposed for the building, and would not be compatible with surrounding development. The Applicant then filed a request for reconsideration, which the Council denied. The Applicant petitioned the Circuit Court to review the District Council's denial of the application. During court proceedings, the applicant and representatives of the surrounding community agreed to revise the proposed development plan to conform the project to the Sector Plan recommendations. With the consent of the parties, the Circuit Court granted a motion by the applicant to remand the case to the District Council. The District Council remanded the case to the Hearing Examiner, finding that further proceedings, including consideration of any revised development plan that the Applicant might submit, would serve the public interest.

Following the Council's remand to the Hearing Examiner, the Applicant submitted revised plans that propose a maximum building height of 70 feet. Technical Staff recommended approval of the revised application, finding that it was much closer to the Sector Plan recommendations

and, in light of the Planning Board's earlier recommendation of approval, would be appropriate for the site. The Alternative Review Committee (the "ARC Committee") made a finding that with moderately priced dwelling units on site, the proposed development would not be financially feasible within the constraints of the 65-foot height limit recommended in the Sector Plan. The Planning Board concurred with this finding and recommended that the proposed Development Plan be approved with a maximum height of 70 feet. Following a public hearing, the Hearing Examiner recommended approval of the application on grounds that it satisfies the requirements of the zone, it would be compatible with land uses in the surrounding area, and it would serve the public interest.

The District Council agrees with the Hearing Examiner's conclusions, and incorporates herein by reference the Findings of Fact, Summary of Hearing, Zoning Issues and Conclusions portions of her report and recommendation dated July 14, 2006.

A. Subject Property

The subject property is located in downtown Bethesda, on the west side of Woodmont Avenue. It occupies the entire block between Hampden Lane and Montgomery Lane. The property is currently developed with two single-family detached residential buildings facing Montgomery Lane in the R-60 Zone, which are used for offices; a three-story multi-family building facing Hampden Lane in the R-10 Zone, which contains apartments, an upholsterer and offices; and a gravel parking area filling the middle portion of the site.

The subject property has street frontage on three sides. To the east it fronts on Woodmont Avenue, an arterial road with four to five lanes providing access for north-south traffic in the CBD. Sections of Woodmont Avenue operate in a one-way direction, southbound, adjacent to the subject property. To the south, the subject property fronts on Hampden Lane, a business district street with two travel lanes providing for east-west travel between Arlington Road and Woodmont Avenue. The right-of-way on Hampden Lane varies, but is recommended in the Sector Plan to be 60 feet. To the north, the subject property fronts on Montgomery Lane, a narrow business district street that is recommended in the Sector Plan for a 52-foot right-of-way. Travel on Montgomery Lane is primarily

two-way east-west, except for a stretch between Woodmont Avenue and a small side street called West Lane, adjacent to the subject property, where travel is permitted only in a westbound direction.

B. Surrounding Area and Zoning History

The surrounding area for this application consists of the area bounded roughly by East Lane on the east, Moorland Lane on the north, Elm Street on the south and properties fronting on Arlington Road on the west. This area includes the Transit Station Residential District ("TS-R District") defined in the Sector Plan and a portion of the Metro Core District defined in the Sector Plan.

The surrounding area contains a wide mix of uses and zones, as described in detail on pages 7 through 11 of the Hearing Examiner's July 14, 2006 report and recommendation. Confronting to the east is a high-rise building with a 143-foot-tall office component and a 100-foot-tall residential component. Confronting to the south, across Hampden Lane, is a two-story commercial building. Abutting to the west is a luxury townhouse development, the City Homes Townhouses, with five rows of four-story townhouses reaching 55 to 60 feet in height. Confronting directly to the north, across Montgomery Lane, is a small open area. Adjacent to that open area and partially confronting the subject property is the 100-foot-high Edgemoor Condominiums building. Other uses in the surrounding area include additional residential and office high-rises, low-rise residential, office and institutional uses, and additional townhouses.

The subject property was classified under the R-10 and R-60 Zones in the 1954 Regional District Zoning. This zoning was reaffirmed in the 1958 Countywide Comprehensive Zoning, and by Sectional Map Amendment in 1977 (SMA G-20) and 1994 (SMA G-711).

C. Proposed Development

The Applicant proposes to construct a high-rise, multi-family residential building, and has offered binding elements that establish a number of key parameters for the building, including architectural elements. These are summarized below. The TS-R Zone specifies that building height must be established by the Planning Board during site plan review, taking into consideration factors such as parcel size, relationship to surrounding uses, and the need to preserve light and air for

surrounding properties. The Applicant has placed an upper limit on the height of the building in the textual binding elements, but the Planning Board retains the discretion to require a lower height.

Binding Elements, per Development Plan, Exhibit 116(b)

Area to be rezoned	30,819 square feet
Net lot area	22,546 sq. ft.
Floor area ratio (FAR)	up to 2.5, plus up to 0.55 FAR for MPDU bonus
Number of dwelling units	50 – 70
Gross floor area	no more than 94,218 sq. ft.
Public use space	not less than 10% of net lot area, 2,255 sq. ft.
Active/Passive Recreation Space	Not less than 20% of net lot area or 4,510 sq. ft., percentage on the ground determined by Planning Board
Building coverage	Maximum 65%
Building height	Not greater than 70 feet (7 stories plus English basement), with at least 1,300 sq. ft. in northwest corner limited to 60 feet
	Rooftop structures no more than 15 feet high, set back from Montgomery Lane building edge no less than 25 feet, and covering no more than 50% of rooftop
Streetscape	Substantial compliance with Sector Plan guidelines
Parking	Resident parking will be underground, with possible small number of surface parking spaces for drop-off and visitor parking adjacent to Hampden Lane
Ancillary commercial uses or restaurants	None
MPDUs	Up to 15%, all on site

Binding Elements, per Development Plan, Exhibit 116(b), cont.

Setbacks	Minimum of 18 feet on western property line. Other setbacks to be in substantial compliance with setbacks shown on Development Plan.
Access	All vehicular access from Hampden Lane
Materials/Design	Construction materials and architectural design to be consistent with images on Development Plan page A0.03. Northeast and northwest corners to be constructed from brick, metal floor spandrels, and windows, without large expanses of glass curtain wall or other reflective surfaces.
Construction agreement	Applicant to work with Edgemoor Condominium Association to devise construction agreement to mitigate construction impacts.
Condominium fees	Applicant to work with County on funding mechanism to protect MPDU owners from rapid escalations in condominium fees.

The area proposed for rezoning in this case (which is the tract area the Applicant proposes to use to calculate permitted density) is 30,891 square feet, or .71 acres. With this acreage, a 50-unit building would represent about 70 dwelling units per acre, and 70 units would be about 99 units per acre. The project will include at least the minimum number of moderately priced dwelling units ("MPDUs") required under county law (12.5 percent), all of which would be on site.

The proposed development will satisfy the zoning ordinance requirements to designate 10 percent of the site to public use space and 20 percent to active and passive recreation space. The latter will likely be provided in part on the ground outside the building, and in part on the rooftop and in interior spaces including a fitness center and a lobby/community room. The Applicant has committed, by binding element, to locate all vehicular access on Hampden Lane.

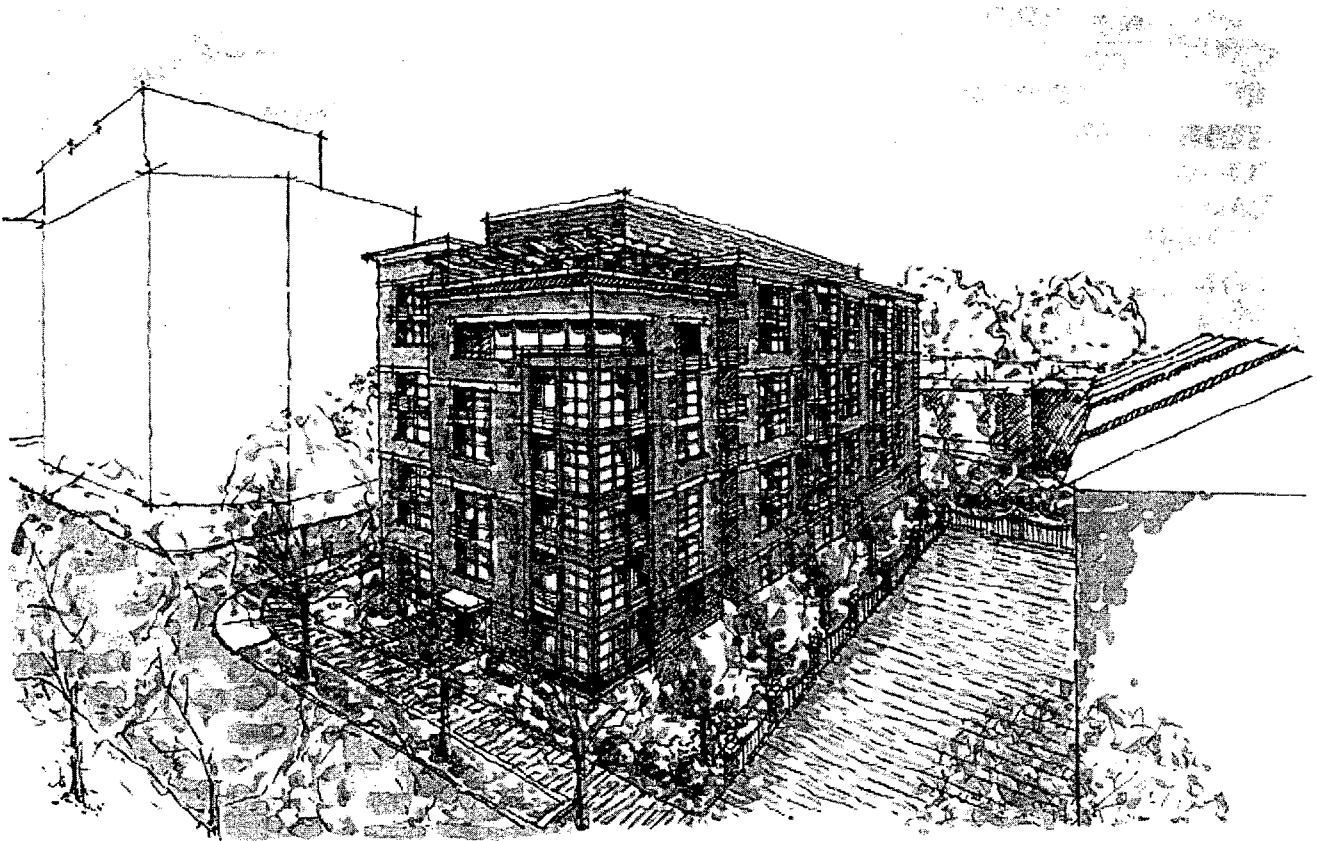
A Development Plan in the TS-R Zone must include the elements required under Code § 59-D-1.3, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. The principal component of the development plan in this case is a three-page document entitled "Development Plan," Exhibits 116(a) – (c), which contains a conceptual site plan drawing, as well as notes, written binding elements and a conceptual parking layout. Additional items required for a development plan have been submitted in the form of vicinity maps (e.g. Exs. 5 and 45(i)).

The textual binding elements require substantial compliance with the images depicted on Page A0.03 of the Development Plan, which are shown below and on the next page.

Artist's Rendering of Woodmont Avenue and Montgomery Lane Facades, from Ex. 116(c)

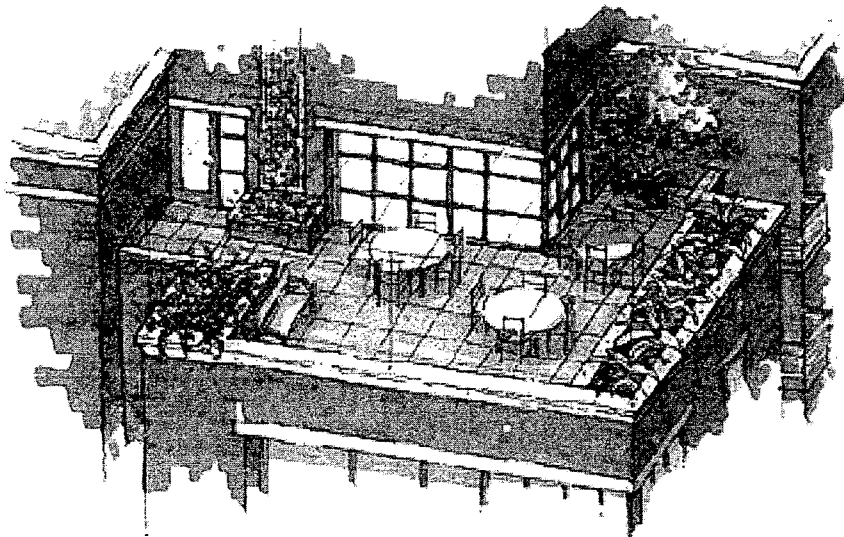


Artist's Rendering of Facades Facing Montgomery Lane and City Homes Driveway, from Ex. 116(c)



**Artist's Rendering of Terrace on Roof of 60-foot Portion of Building in Northwest Corner,
from Ex. 116(c)**

Terrace Area to be at least 1,300 square feet in size, per textual binding element.



D. Master Plan

The subject property is located in an area identified in the Sector Plan as the TS-R District. The Sector Plan's basic vision for the TS-R District is set forth below (Sector Plan at 5):

The Plan recommends creation of a high-density, low-rise 'urban village' that steps down in height from 6 floors along Woodmont Avenue to 3 floors along Arlington Road, and provides from 45 to up to about 100 dwelling units per acre. The Plan retains and revises the TS-R (Transit Station-Residential) Zone to achieve this vision.

The urban village concept was described in detail, with written objectives, extensive written recommendations, urban design guidelines and several maps and drawings. These elements, taken together, are clearly designed to carry out the high-density, low-rise "urban village" concept. The District Council agrees with the Hearing Examiner and Technical Staff that the Sector Plan recommends development of the subject property for multi-family residential use under the TS-R Zone. Thus, the development proposed here is consistent with the use recommended in the Sector Plan.

With regard to residential density, the Sector Plan recommends a minimum of 45 dwelling units per acre everywhere in the TS-R District except on lots facing Arlington Road, and states that higher densities with 2.5 FAR and "about 100 dwelling units per acre" would be allowed elsewhere in the district. See Sector Plan at 82. The range of 50 to 70 units proposed in this application would not necessarily produce a unit density approaching 100 units per acre. However, the proposed development would produce between 70 and 99 units per acre, in the top half of the range the Sector Plan recommends. Moreover, the present proposal would provide for the maximum floor area ratio ("FAR") recommended in the Sector Plan, which is another important measure of density. For all of these reasons, the District Council finds that the proposed rezoning substantially complies with the density recommended in the Sector Plan.

Turning to the Sector Plan's goal of achieving a "low-rise, high-density, urban village" form of development in the area of the subject site, the District Council agrees with the Hearing Examiner that the proposed development would support this goal. The building is proposed with seven stories rather than the six recommended in the Sector Plan, but the maximum height of the building

would be 70 feet, just five feet (less than ten percent) above the height limit recommended in the Sector Plan. In other respects, such as streetscape and the preference for shallow setbacks, the proposed development is fully consistent with the Sector Plan's vision. In addition, one corner of the building would drop down to 60 feet, reducing the overall mass of the building and its impact on adjacent properties. Moreover, the 70-foot height requested is consistent with the Sector Plan's scheme of greater heights along Woodmont Avenue, and would provide a significant step-down in height from adjacent high-rises to the north and east, as called for in the Sector Plan.

For all of the above reasons, the District Council concludes that the proposed development would substantially comply with the Sector Plan.

E. Public Facilities

A traffic study is not required for the proposed development under the Planning Board's guidelines for Local Area Transportation Review ("LATR") because the development is expected to generate only 13 new vehicular trips during the weekday morning and evening peak hours. Below the threshold level of 30 peak hour trips, the LATR Guidelines consider a development too small to have a measurable traffic impact on a specific local area. Accordingly, the Applicant did not submit an LATR study in this case. The Applicant did, however, submit two studies prepared by Technical Staff indicating that there were no intersections in downtown Bethesda that failed the County's test for unacceptable levels of congestion.

No evidence was presented to suggest that there is significant congestion in the area of the subject property or the Bethesda CBD in general, or that the proposed development would have adverse impacts on traffic. The District Council agrees with the Hearing Examiner that efforts by opposition parties to discredit the two Technical Staff studies were unavailing. Based on the preponderance of the evidence, the District Council finds the Applicant has adequately demonstrated that the proposed development would not have adverse impacts on traffic.

The proposed development is expected to generate approximately three elementary school students, two middle school students and one high school student. According to school capacity

calculations prepared by Montgomery County Public Schools, enrollment is expected to exceed capacity for the entire six-year forecast period in the relevant elementary school. Excess enrollment projected in the applicable middle and high schools is expected to be resolved by expansions identified in the FY 2005-2010 Capital Improvements Program. Based on the school capacity methodology adopted under the County's Growth Policy, capacity has been found to be adequate to support additional development throughout the relevant school cluster, the Bethesda-Chevy Chase cluster. Under these circumstances, and particularly in light of the very small number of potential students involved, the District Council concludes that the possible impact on the public schools is not sufficient to justify denial of the present application.

F. Development Plan Findings

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): substantial consistency with use and density indicated in master plan, no conflict with other county plans and policies. As discussed in Part D above, the District Council concludes, based on the preponderance of the evidence, that the proposed rezoning and development will substantially comply with the use and density recommended in the Sector Plan. No evidence of record suggests that the proposed development will conflict with any established county plan or policy. Moreover, the evidence indicates that the proposed rezoning will be consistent with the Growth Policy and the Capital Improvement Program.

§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

1. Intent and Purpose of the Zone

Section 59-C-8.21 of the Zoning Ordinance states that the TS-R Zone is intended to be used in transit station development areas and in locations where multiple-family residential development already exists or is recommended by the master plan. The District Council finds that the

proposed rezoning will satisfy this intent because the subject property is located less than 750 feet from the TS-R District, in an area that already has multiple-family residential development and was designated in the Sector Plan as the Transit Station-Residential District.

The purposes of the TS-R Zone are to promote the effective use of transit station development areas; to provide residential uses within walking distance of transit stations; to provide a range of densities to match the diverse characteristics of the County's several transit station areas; and to stimulate coordinated, harmonious development, prevent detrimental effects on the use or development of adjacent properties or the surrounding neighborhood; provide housing for persons of all economic levels; and promote health, safety and welfare. The District Council finds that the proposed rezoning will be consistent with these purposes because the site is located within walking distance of the Bethesda Metro Station; the improved sidewalks and streetscape will enhance pedestrian connections to the Metro; the range of densities proposed will add to the high density intended for the TS-R District and will be compatible with the characteristics of the transit station area; the form of development proposed will be compatible with the surrounding area and therefore will contribute to coordinated, harmonious development and avoid detrimental effects on the use or development of adjacent properties or the surrounding neighborhood; on-site MPDUs will ensure that the proposed development provides housing for persons of different income levels; and the development will promote health, safety and welfare by providing needed housing in downtown Bethesda, in a form that is compatible with the surrounding area.

The District Council's finding of compatibility rests on a number of factors. The use proposed here – multi-family residential – is clearly compatible with the residential uses in adjoining buildings. The use is also compatible with non-residential uses, which will benefit from a larger pool of residents to provide customers, employees, etc. Under the current configuration, compatibility of the proposed structure is equally clear. The shape of the subject property dictates that any building of significant size must face Woodmont Avenue, perpendicular to the Edgemoor Condominiums. With this orientation, the proposed building would extend the line of high rises down Woodmont Avenue in a

fashion quite harmonious with the Edgemoor Condominiums, while continuing the step-down in heights typically found in downtown Bethesda as one moves away from the Metro. The proposed building would inevitably interfere with views from the middle floors of the Edgemoor Condominiums, but the same would be true of any building on the site that is consistent with the Sector Plan.

The District Council agrees with the Hearing Examiner that the proposed building, with the setbacks, site configuration and height limitations shown on the Development Plan, would be compatible with the adjacent City Homes Townhouses to the west. The new building would be 10 to 15 feet taller than the townhouses, which is appropriate for a structure facing Woodmont Avenue, and would be separated from the townhouses by a grassy strip 18 feet wide, plus the 30-foot width of the townhouse driveway. The new building might extend closer to the street than the townhouses, but would be roughly even with the townhouses' side stoops, which face Montgomery Lane. Moreover, the townhouses' bulk would keep them from being visually overwhelmed by the proposed building.

The application's binding element of substantial compliance with the streetscape guidelines contained in the Sector Plan is a very important element of compatibility. Streetscape improvements would continue the attractive streetscape on Montgomery Lane and provided a much improved pedestrian environment on Woodmont Avenue. The textual binding elements further assure compatibility with the prevailing brick architecture of surrounding buildings, and prohibit the use of large expanses of glass on the corners closest to adjacent residences.

In sum, the District Council concludes that a building with the parameters presented here would fit compatibly into its surroundings.

2. Standards and Regulations of the Zone

The TS-R Zone includes requirements regarding location, which echo the intent of the zone as discussed above. The zone also includes a requirement that development conform to the facilities and amenities recommended by the Sector Plan, including providing any necessary easements or dedications. The textual binding elements specify that the development would substantially comply with the Sector Plan's streetscape recommendations. However, property to be

dedicated for roadway right-of-way is not clearly indicated on the Development Plan site layout (Exhibit 116(b)). In view of other evidence in the record of the Applicant's intention to provide necessary roadway dedications, the District Council does not consider this grounds for denial, but stipulates that this omission must be rectified on the Development Plan that is submitted for certification.

The proposed multi-family dwellings are a permitted use in the TS-R Zone. In addition, the proposed development will be consistent with applicable development standards, as shown in the table on page 65 of the Hearing Examiner's July 14, 2006 Report and Recommendation. The TS-R Zone further requires off-street parking to be located so as to have a minimal impact on adjoining residential properties. This requirement will be satisfied by providing residential parking underground, eliminating the sights and sounds of surface parking.

3. Maximum Safety, Convenience and Amenity of the Residents

The binding element concerning streetscape ensures improved pedestrian connections between Arlington Road and Woodmont Avenue. Moreover, the building will be extremely accessible to Metro, shopping, entertainment and outdoor recreation. Based on these elements, the District Council concludes that the proposed development will provide for the maximum safety, convenience and amenity of the residents of the development.

4. Compatibility

For the reasons discussed in Part F.1 above, the District Council concludes that the proposed development will be compatible with the land uses in the surrounding area.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate, and efficient.

§59-D-1.61(d): preservation of natural features. The subject property is located in a highly urbanized area and has few natural features. Technical Staff reports that two existing trees on the site will be removed, but efforts will be made to preserve trees in the public right-of-way. The application is exempt from forest conservation requirements because of the site's small size and lack of

existing forest cover. The developer will be required to conform to county requirements for stormwater management. Based on these factors, the District Council concludes that this requirement is satisfied.

§59-D-1.61(e): common area maintenance. Condominium association documents that have been submitted in draft form adequately and sufficiently demonstrate the intended ownership and perpetual maintenance of common areas.

G. Public Interest

The District Council concludes that the proposed zoning bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.”
[*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed in Part D above, the District Council finds that the subject application is in substantial compliance with the use and density recommended in the *Bethesda CBD Sector Plan*. Moreover, the evidence amply supports a finding that the proposed development would support the achievement of the “low-rise, high-density, urban village” form of development recommended in the Sector Plan, despite a minor deviation from the height recommendation.

The evidence demonstrates that the proposed development will not have any adverse impact on existing roadways in the area. The evidence suggests that the proposed development is expected to add three students to an elementary school that has adequate capacity under the Growth Policy, but is considered over capacity by Montgomery County Public Schools. The relevant middle and high schools are expected to have adequate capacity by the time the building proposed here is built. The District Council finds that under these circumstances, the minor potential impact on public schools is not sufficient to justify denial of the application.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification is in the public interest.

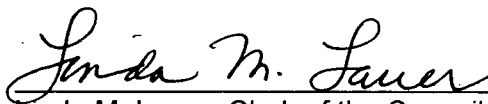
For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-819, requesting reclassification from the R-10 and R-60 Zones to the TS-R Zone of 22,546 square feet of land located at 4802 Montgomery Lane, 4804 Montgomery Lane, 4905 Hampden Lane and 4901 Hampden Lane, Bethesda, all in the 7th Election District, is hereby **approved** in the amount requested and subject to the specifications and requirements of the final Development Plan, Ex. 116(a) – (c), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance, with all land proposed for dedication as public right-of-way clearly indicated.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council